



waived when not asserted by UBC in its initial Answer, and now subjects Corona to unfair surprise. Corona also suggests that the new defense is frivolous, presented in bad faith, motivated by UBC's desire to delay the proceedings, and ultimately will be futile.

Following an independent review of the parties' arguments and evidentiary submissions, this Court agrees with Judge Gossett's conclusion that UBC's Amended Answer was not submitted in bad faith, will not create undue prejudice to Corona nor unduly delay the proceedings, and is not futile. The Court is not persuaded by Corona's argument that UBC's newly raised defense affects venue and is now waived because it was not asserted in UBC's first responsive pleading.

Having determined that Judge Gossett's Order is neither clearly erroneous nor contrary to law, the Court will also deny UBC's Motion to Strike Plaintiff's Supplemental Evidence Index, Affidavit, and Brief (Filing No. 175) and Corona's belated Motion for Leave to File Supplements to His Prior Submissions (Filing No. 180) as moot.<sup>1</sup>

Accordingly,

IT IS ORDERED:

1. Plaintiff Amador L. Corona's Statement of Objections to Magistrate Judge's Order (Filing No. 174) is denied;
2. Harbortouch Payments, LLC's (formerly United Bank Card, Inc. d/b/a Harbortouch) Motion to Strike Plaintiff's Supplemental Evidence Index,

---

<sup>1</sup> Twenty-eight days after UBC's reply brief was filed in support of its Motion for Leave to File Amended Answer, Corona filed a supplementary Index (Filing No. 166), Affidavit (Filing No. 167) and Brief (Filing No. 168) in opposition to UBC's Motion. Corona did not seek leave of court to file such supplementary materials, as required by NECivR 7.1(c).

Affidavit, and Brief in Opposition to Defendant's Motion to Amend its Answer (Filing No. 175) is denied as moot; and

3. Plaintiff's Motion for Leave to File Supplements to His Prior Submissions in Opposition to Defendant United Bank Card, Inc.'s Motion to Amend (Filing No. 180) is denied as moot.

DATED this 25<sup>th</sup> day of February, 2015.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge